

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Assess and  
Revise the Regulation of  
Telecommunications Utilities.

FILED  
PUBLIC UTILITIES COMMISSION  
FEBRUARY 24, 2005  
SAN FRANCISCO OFFICE  
RULEMAKING 05-02-XXX

**ORDER INSTITUTING RULEMAKING  
FOR THE PURPOSE OF ASSESSING AND REVISING  
THE REGULATION OF TELECOMMUNICATIONS UTILITIES**

**Summary of Order**

This Order institutes a rulemaking to assess and revise the regulation of all telecommunications utilities in California except for small incumbent local exchange carriers (ILECs). The primary goal of this proceeding is to develop a uniform regulatory framework for all telecommunications utilities, except small ILECs, to the extent that it is feasible and in the public interest to do so. The specific issues that will be considered in this proceeding are listed and described in Appendix A of this Order. The preliminary schedule for conducting this proceeding is set forth in Appendix B.

**Background**

The Commission employs different regulatory frameworks for different providers of telecommunications services to the public. The Commission regulates the price, quality, terms, and conditions of most services provided by the large and medium sized ILECs. The Commission does not regulate the price of services provided by competitive local exchange carriers (CLECs) and

interexchange carriers (IECs), and regulates only limited aspects of the quality, terms, and conditions of the services offered by CLECs and IECs. The Commission's regulation of wireless carriers is even more limited.

There have been dramatic changes to the telecommunications landscape in recent years. ILECs now compete with cellular and cable TV companies in both the local and long-distance markets. Although there is vigorous competition for long distance services, "long-distance" is disappearing as a stand-alone service as more and more consumers opt for bundled service packages or use Internet Protocol based networks. In fact, consumers are increasingly communicating in ways that bypass traditional telephone networks entirely. For example, it is now common to exchange voice and text messages through cell phones, computers, and other means without ever having to use the public switched telephone network. These changes to the telecommunications landscape have created a need for the Commission to conduct a comprehensive examination of the way it regulates telecommunications services.

### **Preliminary Scoping Memo**

This proceeding shall be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup> As required by Rule 6(c)(2), this Order includes a preliminary scoping memo<sup>2</sup> as set forth below.

The scope of this proceeding is to review and, if appropriate, revise the Commission's regulation of telecommunications services provided to end users. The ultimate goal of this proceeding is to develop a uniform regulatory

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<sup>1</sup> The Rules of Practice and Procedure are posted on the Commission's web site at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

<sup>2</sup> Rule 5(m) defines "scoping memo" as an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding.

framework that applies to all providers of regulated telecommunications services, except small ILECs, to the extent that it is feasible and in the public interest to do so.<sup>3</sup> Any regulatory framework adopted by the Commission should achieve several objectives. Most importantly, the adopted framework should ensure, to the extent practical, that every person and business in California has access to modern, affordable, and high quality telecommunications services. The adopted framework should also be competitively and technologically neutral. In addition, the adopted framework should encourage technological innovation, economic development, and employment in California. The specific issues comprising the scope of this proceeding are listed in Appendix A. The final scope will be determined in one or more rulings issued by the assigned Commissioner pursuant to Rules 6(c)(2) and 6.3.

Pursuant to Rule 6(c)(2), we preliminarily determine that (1) the category of this proceeding is “quasi-legislative” as that term is defined in Rule 5(d),<sup>4</sup> and (2) there is no need for evidentiary hearings. If it is subsequently determined that evidentiary hearings are needed, the time, place, and scope of the evidentiary hearings will be set in one or more rulings issued by the assigned Commissioner or the assigned Administrative Law Judge (ALJ).<sup>5</sup>

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<sup>3</sup> The rates for most services offered by small ILECs are currently set on a cost-of-service basis. This Order does not propose any changes to the current regulatory structure for small ILECs.

<sup>4</sup> Rule 5(d) defines “quasi-legislative” proceedings as proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

<sup>5</sup> Rule 5(k)(3) provides that in a quasi-legislative proceeding, the assigned Commissioner is the presiding officer, except that the assigned ALJ, in the assigned Commissioner’s absence, shall act as presiding officer at any hearing other than a formal hearing as defined in Rule 8(f)(2).

The preliminary schedule for this proceeding is set forth in Appendix B of this Order. As shown in Appendix B, this proceeding will be conducted in two phases. Phase 1 will focus on the selection and implementation of a uniform regulatory framework. Phase 2 will address implementation issues associated with the adopted uniform regulatory framework that require further development and/or evidentiary hearings.

Parties will have an opportunity during each Phase to submit written comments and to request an evidentiary hearing. Appendix B contains a preliminary schedule for conducting each Phase. We anticipate that because of the complexity of the issues in this proceeding, it may be necessary to revise the schedule as the proceeding progresses. Accordingly, the assigned Commissioner and the assigned ALJ may issue rulings to revise the schedule.

Parties may file and serve opening comments regarding Phase 1 issues no later than 45 days from the date this Order is mailed, and reply comments no later than 60 days from the date this Order is mailed. As required by Rule 6(c)(2), parties shall also include in their opening comments any objections they may have regarding (1) the categorization of this proceeding as “quasi-legislative,” (2) the preliminary determination that evidentiary hearings are not required, and (3) the preliminary scope and timetable for this proceeding as set forth in Appendices A and B of this Order. Any party who believes that an evidentiary hearing is required regarding Phase 1 issues should file a motion requesting a hearing no later than 70 days from the date this Order is mailed. Any such motion must identify and describe (1) the material issues of fact, (2) the adjudicative evidence the party proposes to introduce at the requested hearing, and (3) a proposed schedule for the hearing. Any right that a party may otherwise have to an evidentiary hearing regarding Phase 1 issues will be waived if the party does not file a timely motion requesting an evidentiary hearing.

Following the receipt of Phase 1 comments and any motions requesting an evidentiary hearing, the assigned Commissioner will issue a ruling pursuant to Rules 6(c)(2) and 6.3. The ruling will address the scope of this proceeding, particularly in regard to Phase 1 issues. The ruling will also finalize the category of this proceeding, the need for evidentiary hearings regarding Phase 1 issues, and the schedule for the resolution of Phase 1 issues. If appropriate, the ruling will designate a principal hearing officer. The ruling may also provide a revised scope and schedule for Phase 2. After the ruling is issued, parties may submit an appeal to the full Commission pursuant to Rule 6.4 regarding the assigned Commissioner's ruling on category.

**Service and Availability of this Order**

This Order shall be served on the following: all ILECs, CLECs, IECs, and wireless carriers; the service list for R.95-04-043/I.95-04-044, the proceeding for matters related to local exchange competition; the service list for R.01-09-001/I.01-09-002, the proceeding regarding the fourth triennial review of the New Regulatory Framework for Pacific Bell Telephone Company d/b/a SBC California (SBC) and Verizon California, Inc. (Verizon); and I.04-02-007, the proceeding regarding the extent to which the service known as Voice Over Internet Protocol should be exempted from regulatory requirements.

This Order will be available to the public on the Commission's web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). A copy of this Order may also be obtained from the Commission's Central Files Office in San Francisco [(415) 703-2045]; and from the Commission's Public Advisor Offices in Los Angeles [(213) 897-3544] and San Francisco [(415) 703-2074].

**Participation and Service List**

This Order does not name any respondents. All telecommunications providers, cable companies, and providers of Internet Protocol are welcome to participate in this proceeding either individually or through their industry associations.

The Commission's practice is to require any party who wishes to formally participate in a proceeding to submit an appearance form at a prehearing conference (PHC) or evidentiary hearing. This practice may discourage formal participation in this proceeding, since individuals and small organizations may find it burdensome to travel to a PHC or evidentiary hearing.

To facilitate broad public participation in this proceeding, we will allow parties to formally participate by mailing a notice of participation to the Commission's Process Office. The address of the Commission's Process Office is Room 2000, 505 Van Ness Avenue, San Francisco, CA 94102. The notice of participation must include all of the following information:

- The proceeding number shown on the first page of this Order.
- The name, address, and telephone number of each person to be placed on the service list. Parties are encouraged to provide an e-mail address as well.
- The person, entity, or organization for which the notice is being filed.
- The category of participation. There are three categories of participation: Appearance, State Service, and Information Only. Those in the Appearance category are parties with all attendant rights and obligations. Appearances receive exhibits, testimony, and all formally filed documents, including pleadings, motions, rulings, proposed decisions, and Commission decisions. Appearances must serve their pleadings on all other Appearances and those in the State Service category. Persons should not indicate that they are an Appearance unless they intend to

actively participate in this proceeding by filing comments. Any Appearance that fails to actively participate may be moved to the Information Only portion of the service list. The State Service category consists of persons employed by the State of California. Those in the State Service category receive the same documents as appearances, but they are not parties to the proceeding and cannot file pleadings. Those in the Information Only category receive all Commission-generated documents at no charge, such as rulings, proposed decisions, and Commission decisions. Appearances are not required to serve their pleadings on those in the Information Only category.

Parties may also seek to formally participate in this proceeding by filing a notice of party/non-party status at a PHC or evidentiary hearing if one is held. Any person who is interested in participating in this proceeding but is unfamiliar with the Commission's procedures may contact the Commission's Public Advisor Offices in Los Angeles [(213) 897-3544] or San Francisco [(415) 703-2074].

Parties should note that it is not necessary to formally participate in this proceeding in order to monitor major developments. Significant documents in this proceeding (e.g., rulings and decisions) will be posted on the Commission's web site. There is no need to mail the previously described notice of participation to the Process Office to monitor in this fashion.

The Process Office will compile an initial service list based on the notices that it receives within 30 days from the date this Order is mailed.<sup>6</sup> The service list for this proceeding may be obtained from the Commission's web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) or the Process Office [(415) 703-2021].

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<sup>6</sup> The Process Office periodically updates service lists to correct errors and to make changes at the request of the parties on the list or the assigned ALJ.

The assigned Commissioner and the assigned ALJ shall have ongoing oversight regarding the procedures governing parties' participation and the service list. They may revise these procedures and the service list, as necessary.

### **Electronic Service Protocol**

The filing and service of documents in this proceeding shall be governed on an interim basis by the revised Rules in Appendix C of D.04-12-057. The revised Rules have been sent to the Office of Administrative Law (OAL) for review and approval. Parties should use the revised Rules in Appendix C of Decision 04-12-057 until final Rules are adopted by the OAL, and then use the Rules adopted by the OAL. In addition to the requirements set forth in the Rules, all parties shall provide to the assigned ALJ via e-mail an electronic copy of their documents in Microsoft Word format.

### **Ex Parte Communications**

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rules 7(a)(4) and 7(d), ex parte communications will be allowed in this proceeding without the restriction or reporting. These rules governing ex parte communications shall remain in effect until the assigned Commissioner makes an appealable determination of category. Following the Commissioner's determination, the applicable ex parte communication and reporting requirements shall depend on such determination unless and until the determination is modified by the Commission pursuant to Rule 6.4 or 6.5.

### **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to assess and revise the regulation of all telecommunications utilities in California, except for small incumbent local exchange carriers (ILECs).



2. The specific issues to be considered in this proceeding are listed and described in Appendix A of this Order. These issues constitute the general scope of this proceeding. The exact scope of this proceeding will be determined in one or more rulings issued by the assigned Commissioner.

3. The preliminary schedule for conducting this proceeding is set forth in Appendix B. The assigned Commissioner and the assigned Administrative Law Judge (ALJ) may revise the schedule of this proceeding.

4. The category of this rulemaking is preliminarily determined to be “quasi-legislative” as this term is defined in Rule 5(d) of the Commission’s Rules of Practice and Procedure (Rules).

5. It is preliminarily determined that there is no need for evidentiary hearings. The final determination on the need for evidentiary hearings will be made in one or more rulings issued by the assigned Commissioner. The time, place, and scope for evidentiary hearings, if any, shall be set in one or more rulings issued by the assigned Commissioner or the assigned ALJ.

6. Parties that seek to participate in this proceeding should mail a notice of participation to the Commission’s Process Office. The address of the Process Office is Room 2000, 505 Van Ness Avenue, San Francisco, CA 94102. The notice must include all the information identified in the body of this Order.

7. The Process Office shall create an initial service list based on notices of participation received by the Process Office within 30 days from the date this Order is mailed. Parties may obtain the service list from the Commission’s web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) or by contacting the Process Office [(415) 703-2021].

8. The assigned Commissioner and the assigned ALJ shall have ongoing oversight regarding the procedures governing participation in this proceeding. They may revise these procedures, as necessary. The assigned Commissioner

and the assigned ALJ shall also have ongoing oversight of the service list. They may revise the service list or the procedures governing the list, as necessary.

9. The filing and service of documents in this proceeding shall be governed on an interim basis by the revised Rules set forth in Appendix C of D.04-12-057. The revised Rules have been sent to the Office of Administrative Law (OAL) for review and approval. Parties should use the revised Rules in Appendix C of D.04-12-057 until final Rules are adopted by the OAL, and then use the Rules adopted by the OAL.

10. All parties shall provide to the assigned ALJ via e-mail an electronic copy of their documents in Microsoft Word format.

11. Opening comments regarding Phase 1 issues identified in Appendix A shall be filed and served no later than 45 days from the date this Order is mailed. Reply comments shall be filed and served no later than 60 days from the date this Order is mailed. As required by Rule 6(c)(2), parties shall include in their opening comments any objections they may have regarding (i) the categorization of this proceeding as “quasi-legislative,” (ii) the preliminary determination that evidentiary hearings are not required, and (iii) the preliminary scope and schedule for this proceeding as set forth in Appendices A and B.

12. Any party who believes that an evidentiary hearing is required regarding Phase 1 issues shall file a motion requesting such a hearing no later than 70 days from the date this Order is mailed. Any such motion must identify and describe (i) the material issues of fact, (ii) the evidence the party proposes to introduce at the requested hearing, and (iii) the schedule for conducting the hearing. Any right that a party may otherwise have to an evidentiary hearing regarding Phase 1 issues will be waived if the party does not submit a timely motion requesting an evidentiary hearing.

13. This Order shall be served on the following: (i) the large and mediums sized ILECs; (ii) all competitive local exchange carriers and interexchange carriers; (iii) all wireless carriers; (iv) the service list for consolidated Rulemaking (R.) 95-04-043 and Investigation (I) 95-04-044; (v) the service list for R.01-09-001/I.01-09-002, and (vi) the service list for I.04-02-007.

This Order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX A

### Scope of the Proceeding

The scope of this proceeding consists of those issues identified below. The scope of this proceeding may be revised and refined by the assigned Commissioner. Any issue not identified in this Appendix or a subsequent ruling by the assigned Commissioner is outside the scope of this proceeding.

<b>Phase 1 Issues</b>	
1.	Is there a uniform regulatory framework that can be applied to all providers of regulated intrastate telecommunications services? If so, every element of the uniform regulatory framework should be identified and described in detail. Any party that recommends a specific framework should provide adequate information for the Commission to implement the framework.
2.	What specific steps are necessary to implement each element of the uniform framework identified in response to Question No. 1?
3.	Which elements of the uniform framework identified in response to Question No. 1 can be implemented immediately and without hearings?
4.	What specific implementation issues and details regarding the uniform regulatory framework identified in response to Question No. 1 need to be addressed in Phase 2 of this proceeding?
5.	What criteria should be used to decide if current regulations should be replaced by a uniform regulatory framework? Have these criteria been met?
6.	Why is the uniform regulatory framework identified in response to Question No. 1 superior to current regulations?
7.	How does the uniform regulatory framework identified in response to Question No. 1 achieve the following objectives: (A) Ensure, to the extent feasible, that every person and business in California has access to modern, affordable, and high quality telecommunications services; (B) treat all competitors and technologies neutrally; and (C) encourage technological innovation, economic development, and employment in California?
8.	What criteria and procedures should be used to (A) determine which services should remain subject to price regulation; (B) set and revise prices for services that remain subject to price regulation; and (C) remove a particular service from price regulation in the future?

<b>Phase 1 Issues</b>	
9.	What existing monitoring reports and auditing requirements should be modified or eliminated under the uniform regulatory framework? What new reports and audit requirements, if any, should be added?
10.	<p>One possible uniform regulatory framework would include the following elements:</p> <ul style="list-style-type: none"> <li>A. No price regulation except for basic local exchange services provided by the large and medium-sized ILECs to residential and business customers</li> <li>B. No imputation rules except for basic local exchange services provided by the large and medium-sized ILECs. Imputation for basic local exchange services would be set at the UNE-L floor.</li> <li>C. Use advice letter filings to revise prices for all services provided by the large and medium-sized ILECs, except basic local exchange services. Price decreases could be implemented on one day's notice, and price increases after 30 day's written notice to customers.</li> <li>D. No limitations on promotions.</li> <li>E. Adopt FCC resale requirements.</li> <li>F. Allow ILECs to keep gain on sale.</li> <li>G. Decouple Yellow Page revenues from ILEC telephone operations.</li> <li>H. Refrain from price regulation of new services and new technologies.</li> <li>I. Conform reporting requirements to ARMIS.</li> </ul> <p>Parties should provide the information identified in Items 2 through 9, above, with respect to the previously described uniform regulatory framework. In addition, parties may propose other features that should be adopted as part of the previously described regulatory framework.</p>

Phase 1 Issues	
11.	<p>The following issues are outside the scope of this proceeding:</p> <ul style="list-style-type: none"> <li>A. The quality of service provided by Pacific and Verizon to other carriers.</li> <li>B. Requests for relief that are better addressed in complaint proceedings or enforcement OIIs.</li> <li>C. Issues regarding the Universal Lifeline Telephone Service program.</li> <li>D. Changes to existing prices.</li> <li>E. Reform of interstate access charges, which is being addressed in R.03-08-018.</li> <li>F. Reform of regulations associated with Sections 851 and 854.</li> <li>G. The following matters to be addressed in R.01-09-001/I.01-09-002:               <ul style="list-style-type: none"> <li>i. Rehearing of the following matters granted by D.04-07-036 and D.04-12-024: (a) The Commission's workpapers, (b) GO 133-B data for SBC and Verizon, (c) the workpapers of SBC expert Dr. Hauser; (d) TURN's time trend regression analyses; and (d) every SBC survey identified in OP 14 of D.04-12-024.</li> <li>ii. Whether SBC and Verizon should continue to submit the FCC Merger Compliance Oversight Team Reports to the Commission after the FCC requirement to submit these reports expires. (D.03-10-088, p. 165)</li> <li>iii. Whether Verizon should continue to submit the service quality monitoring reports specified in D.00-03-021 after the requirement ends in 2004. (D.02-10-020, OP 2.)</li> <li>iv. Issues concerning the reporting of survey data under the P.A. 02-03 and P.A. 02-04 filing categories. R.01-09-001/I.01-09-002 will focus on whether additional unreported data exists from the period under review and how SBC and Verizon should file survey data prospectively. (D.03-10-088, OP 10.)</li> <li>v. Whether specific changes to NRF are necessary to (a) improve the high quality of service provided under NRF, and (b) prevent future violations of service quality statutes, rules, and orders without making it necessary for parties to pursue lengthy formal complaint processes. (D.03-10-088, <i>mimeo.</i>, pp. 7, 8, 87, 178, FOF 326, COL 7, and OP 7.)</li> <li>vi. Proposals to revise NRF in ways that deter utilities from (a) violating the Commission's rules for affiliate transactions and the imputation of directory earnings, and (b) submitting inaccurate information. (D.02-10-020, OP 16.)</li> <li>vii. Proposals to revise NRF based on (a) the results of the SBC and Verizon audits; (b) D.04-02-063 re: SBC Audit/NRF Phase 2A; and (c) D.03-10-088 re: Service Quality. (OIR 01-09-001 &amp; OII 01-09-002, Appendix A, pp. A-9 and A-10; D.04-02-063, p. 151, Col 92, and OP 16; and D.03-10-088, OP 11.)</li> </ul> </li> </ul>

**Phase 2 Issues**

**Implementation Issues and Details Associated with the Adoption of a Uniform Regulatory Framework:** If the Commission decides in Phase 1 to implement a uniform regulatory framework, Phase 2 will address implementation issues associated with the adopted framework that require further development and/or evidentiary hearings.

**(END OF APPENDIX A)**

## APPENDIX B

Phase 1 Schedule	
Event	Date
<p>Comments re: Phase 1 Issues.</p> <p>Opening comments should include any objections to (1) the categorization of the proceeding, (2) the preliminary determination to that there is no need for evidentiary hearings, and (3) the preliminary scoping memo. (Rule 6(c)(2))</p>	<p>Opening Comments: 45 Days After the OIR Is Mailed</p> <p>Reply Comments: 60 Days After the OIR Is Mailed</p>
Motions for Evidentiary Hearings.	70 Days After the OIR Is Mailed
Replies to Motions. (Rules 45(f) and 45(g))	77 Days After the OIR Is Mailed
<p>Assigned Commissioner Ruling (ACR) regarding the scope, schedule, need for hearing, and categorization of the proceeding. (Rule 6.3)</p> <p><b>Note:</b> The schedule and scope of evidentiary hearings (including written testimony, motions to strike, formal evidentiary hearings, and briefs), if any, shall be set in the ACR or in other rulings issued by the assigned Commissioner or the assigned ALJ.</p>	<p style="text-align: center;">As Soon as Possible After Motions and Replies Are Filed</p>
Appeals of categorization. (Rule 6.4(a))	No Later than 10 Days after the ACR.
Response to appeals. (Rule 6.4(b))	No Later than 15 Days after the ACR
Draft Decision re: Phase 1 Issues.	Target: August 1, 2005
Final Decision re: Phase 1 Issues	Target: First Commission Meeting in September 2005



## APPENDIX B

Phase 2 Schedule	
Event	Date
Comments in Phase 2B	Opening Comments: 30 Days After Final Phase 1 Decision is Mailed  Reply Comments: 45 Days After Final Phase 1 Decision is Mailed
Motions for Evidentiary Hearings	50 Days After Final Phase 1 Decision Is Mailed
Replies to Motions	57 Days After Final Phase 1 Decision Is Mailed
Ruling re: Motions for Evidentiary Hearings.  <b>Note:</b> The scope and schedule of evidentiary hearings (including written testimony, motions to strike, formal evidentiary hearings, and briefs), if any, shall be set in one or more rulings issued by the assigned Commissioner or the assigned ALJ.	As Soon As Possible After Motions And Replies Are Filed
Opportunity to request and present final oral arguments to the Commission. (Rule 8(d))	To Be Determined
Proceeding Submitted. (Rule 8.1(a))	To Be Determined
Draft Phase 2 Decision, Final Decision, and any Other Matters	To Be Determined

**(END OF APPENDIX B)**